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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/816,355 | 04/01/2004 | Steve Walker | 24096.0.2 | 9651 |

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| EXAMINER | |
|---|---|
| FOOTLAND, LENARD A | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3682 | |

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/816,355 | WALKER ET AL. | |
| | Examiner | Art Unit | |
| | Lenard A. Footland | 3682 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6-22-05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim(s) 1-2, 4-5, 7-11, 13-14, 16-17, 19-20, 22-24 are rejected under 35 U.S.C. § 102(e), as being anticipated by Rake. The examiner finds all claimed subject matter to be present.

See col.1, lines 20-45, esp. 37-45, bearings 32, sensor 160.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim(s) 3, 6, 12, 15, 18, 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Rake as set forth in the rejection of claim(s) 1-2, 4-5, 7-11, 13-14, 16-17, 19-20, 22-24 above, and further in view of official notice of common knowledge in the art, and/or, in the alternative, engineering design choice.

The examiner finds that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the additional feature(s) in question since it was known in the art to do so to provide the function(s) disclosed.

Alternatively or additionally, the examiner finds that the broad provision of this/these features *vis-à-vis* that/those disclosed by the reference solve(s) no stated problem insofar as the record is concerned and, accordingly, would have been an obvious matter of design choice. See *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

This application contains claims directed to the following patentably distinct species of the claimed invention: the species of Figure(s) 1a versus that of Fig(s). 2a versus Fig(s). 2b.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, AND A LISTING OF **ALL** CLAIMS READABLE THEREON (**NOT**, FOR EXAMPLE, "AT LEAST CLAIMS..."), INCLUDING **ANY CLAIMS SUBSEQUENTLY ADDED**, AND IF THE AMENDMENT OF ANY CLAIMS RESULTS IN A CHANGE OF THE SPECIES THEY READ UPON, THAT TOO SHOULD BE INDICATED. FAILURE TO DO SO MAY RESULT IN A HOLDING OF

NONRESPONSIVENESS. (Note that any "schematically" illustrated elected species may not schematically represent plural embodiment varying claimed features, unless clarified by drawing corrections, to be responsive.) An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.[1]

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

The elected species is limited to the features set forth in the elected figures, and does not include features not illustrated in those figures, or illustrated in other figures. Accordingly, applicant should review all claims to ensure that all features of the elected

[1] Applicants may wish to consider listing claims readable with care in view of the possible consequences of having to later cancel them.

species are properly illustrated, as required, in order to avoid a holding that an unillustrated feature does not form part of the elected species.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenard A. Footland, whose telephone number is (571) 272-7103.

Lenard A. Footland

Primary Examiner

Technology Center 3600

Art Unit 3682

laf
November 4, 2005